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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 JESSICA MANNER, *individually and on*
11 *behalf of all others similarly situated,*

12 Plaintiff,

13 v.

14 GUCCI AMERICA, INC.,

15 Defendant.

16 Case No.: 15-cv-00045-BAS(WVG)

17
18 **ORDER GRANTING JOINT**
19 **MOTION FOR FINAL APPROVAL**
20 **OF CLASS ACTION SETTLEMENT**

21 **[ECF No. 34]**

22 On December 8, 2014, Plaintiff Jessica Manner commenced this class action in San
23 Diego Superior Court, alleging that Defendant Gucci America, Inc. requested and recorded
24 personal identification information from Plaintiff and putative class members in
25 conjunction with credit card purchase transactions in violation of California's Song–
26 Beverly Credit Card Act, California Civil Code Section 1747.08. Thereafter, Gucci
27 removed this action to federal court. (ECF No. 1.) Now pending before this Court is the
28 parties' joint motion for final approval of class action settlement. (ECF No. 34.) The matter
came on for hearing on August 22, 2016. (ECF No. 43.) The Court has considered the
Settlement Agreement and Release filed on August 3, 2015 ("Settlement" or "Settlement
Agreement"), oral and/or written objections and comments received regarding the
proposed Settlement, the record in the above-entitled lawsuit ("the Action"), and the

1 arguments and authorities of counsel. For the reasons stated below, the Court **GRANTS**
 2 this Motion (ECF No. 34).

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4 **I. PROPOSED SETTLEMENT**

5 The Settlement Agreement applies to class members (“Class” or “Class Members”)
 6 defined as:

7 all persons from whom Defendant requested and recorded personal
 8 identification information in conjunction with a credit card transaction in any
 9 of Gucci’s eight (8) freestanding, full-priced California boutique stores during
 10 the period of December 8, 2013 through the date of notice of entry of the
 11 Preliminary Approval Order. Excluded from the Class are any specific
 transactions that involved shipping, delivery, servicing, installation, or a
 special order.

12 (Settlement Agreement § 1.4.)¹

13 The Settlement contemplates that all Settlement Class Members, defined as all
 14 members of the Class who have not properly and timely opted out, automatically receive
 15 by email or U.S. Mail a voucher, good for six months from the date it is sent, redeemable
 16 for either one free Gucci gift item retailed between \$40.00 and \$120.00,² or a 15% discount
 17 on a single full price merchandise purchase transaction of up to \$10,000. (Settlement
 18 Agreement §§ 1.25, 1.26, 1.29, 2.2, Ex. E.) Thus, the discount shall be limited to \$1,500.
 19 (*Id.* § 1.29.1, Ex. E.) The vouchers will be redeemable at one of eight Gucci stores in
 20 California and are non-transferrable, except to a family member. (*Id.* § 1.29.2, Ex. E.)

21 In the proposed Settlement, Gucci also agrees to change its business practices and
 22 will no longer request or record personal identification information in conjunction with
 23 credit card purchase transactions, in order to fully comply with California Civil Code

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25 ¹ The Settlement Agreement is attached to the parties’ joint notice of settlement (ECF No. 24) as
 26 Exhibit 1. All capitalized terms in this Order shall have the same meanings as set forth in the Settlement
 27 Agreement. (See Settlement Agreement § 1 (Definitions).)

28 ² The free gift item will be selected by Gucci and “limited based on availability at any Eligible
 Voucher Redemption Store.” Each store will offer two gift options, with one retailed at \$100.00 or more.
 (Settlement Agreement § 1.29.1, Ex. E.)

1 Section 1747.08. (Settlement Agreement § 2.3.) In addition, Gucci agrees to pay all notice
 2 and administration costs, attorneys' fees, and Plaintiff's service award, if approved by the
 3 Court. (*Id.* §§ 2.4–2.6.)

4 Following final court approval of the proposed Settlement, Plaintiff and Settlement
 5 Class Members shall be deemed to have released and discharged Gucci from any and all
 6 claims that were alleged in the Complaint or claims that could have been asserted arising
 7 out of facts alleged in the Complaint that took place during the class period. (Settlement
 8 Agreement §§ 4.3, 4.4.)

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10 II. ANALYSIS

11 The Ninth Circuit maintains a “strong judicial policy” that favors the settlement of
 12 class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).
 13 However, Federal Rule of Civil Procedure 23(e) first “require[s] the district court to
 14 determine whether a proposed settlement is fundamentally fair, adequate, and reasonable.”
 15 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000) (citing *Hanlon v.*
 16 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). Where the “parties reach a
 17 settlement agreement prior to class certification, courts must peruse the proposed
 18 compromise to ratify both the propriety of the certification and the fairness of the
 19 settlement.” *Stanton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). In these situations,
 20 settlement approval “requires a higher standard of fairness and a more probing inquiry than
 21 may normally be required under Rule 23(e).” *Dennis v. Kellogg Co.*, 697 F.3d 858, 864
 22 (9th Cir. 2012) (internal quotation marks omitted). Before granting preliminary approval
 23 of a class-action settlement, the Court must first determine whether the proposed class can
 24 be certified. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (indicating that a
 25 district court must apply “undiluted, even heightened, attention [to class certification] in
 26 the settlement context” in order to protect absentees).

27 For the reasons outlined in the Court’s Order Granting Joint Motion for Preliminary
 28 Approval of Class Action Settlement (ECF No. 27), the Court concludes that class

1 certification under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure is
2 appropriate in this case.

3 The Court further finds that the Proposed Settlement is “fair, adequate, and
4 reasonable” under Rule 23(e) of the Federal Rules of Civil Procedure. “It is the settlement
5 taken as a whole, rather than the individual component parts, that must be examined for
6 overall fairness.” *Hanlon*, 150 F.3d at 1026. A court may not “delete, modify or substitute
7 certain provisions” of the settlement; rather, “[t]he settlement must stand or fall in its
8 entirety.” *Id.*

9 “[S]ettlement approval that takes place prior to formal class certification requires a
10 higher standard of fairness.” *Hanlon*, 150 F.3d at 1026. Consequently, a district court “must
11 be particularly vigilant not only for explicit collusion, but also for more subtle signs that
12 class counsel have allowed pursuit of their own self-interests and that of certain class
13 members to infect the negotiations.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d
14 935, 947 (9th Cir. 2011). Other relevant factors to this determination include, among
15 others, “the strength of the plaintiffs’ case; the risk, expense, complexity, and likely
16 duration of further litigation; the risk of maintaining class-action status throughout the trial;
17 the amount offered in settlement; the extent of discovery completed and the stage of the
18 proceedings; the experience and views of counsel; the presence of a governmental
19 participant; and the reaction of the class members to the proposed settlement.” *Hanlon*, 150
20 F.3d at 1026; *see also Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir.
21 2004). Here, as outlined in the Court’s Order Granting Preliminary Approval of the Class
22 Action Settlement (ECF No. 27), the parties’ proposed Settlement complies with all of
23 these requirements.

24 The Court previously approved the form and manner of notice to the class members.
25 (ECF No. 27.) The Court now finds the Class Notice program was executed as previously
26 detailed in its Order. (Declaration of Karen Rogan re: Notice Procedures, ECF No. 34-4).
27 Class Notice was delivered to approximately 15,527 class members via valid email
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1 addresses and another 11,381 notices were delivered via U.S. mail. (*Id.* ¶ 9.) Hence, the
 2 Court finds the Class Notice satisfies due process.

3 Although the Settlement Administrator received no objections to the Settlement or
 4 requests for exclusion (Declaration of Karen Rogan ¶¶ 3–4), class counsel received one
 5 letter and one email from two presumptive class members stating they object to the
 6 Settlement (ECF No. 41). These two individuals did not comply with the Court’s
 7 Preliminary Order; therefore, their objections are technically waived. Nonetheless, the
 8 Court will address the concerns expressed by these two individuals. Both object to the
 9 Settlement because it puts Class Members who live out of state at a disadvantage. (ECF
 10 Nos. 41-2, 41-3.) The Court notes that, in order to recoup the settlement gift, the Class
 11 Member must request it at one of the eight retail establishments in California. Nonetheless,
 12 the Court finds the Settlement is reasonable.

13 First, the Class itself consists of individuals who already purchased something at one
 14 of the California Gucci retail stores. Therefore, all Class Members must have entered one
 15 of these California retail establishments at some point, and the Settlement is specifically
 16 targeted at conduct that occurred in these retail establishments. Second, according to Class
 17 Counsel, Gucci’s records reflect that the vast majority of Class Members live in California.
 18 (ECF No. 41.) Finally, because this is a California-only class, it would be unreasonable to
 19 require Gucci to keep gifts on hand at every one of its retail stores nationwide in case one
 20 of the Class Members sought to request the gift at a different store. Although the Settlement
 21 may not be perfect, the Court finds it is fundamentally fair, given the harm that was alleged.
 22 *See Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (“[T]he question whether a
 23 settlement is fundamentally fair within the meaning of Rule 23(e) is different from the
 24 question whether the settlement is perfect in the estimation of the reviewing court.”).

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1 **III. CONCLUSION**

2 For the reasons stated both in this Order as well as its previous Order Granting
3 Preliminary Approval of the Class Action Settlement, the Court **GRANTS** the parties'
4 Joint Motion for Final Approval of Class Action Settlement. (ECF No. 34.)

5 The Court **ORDERS** as follows:

- 6 1. The Judgment incorporates by reference the definitions in the Settlement
7 Agreement, including its exhibits, and all terms used herein shall have the same
8 meanings as set forth in the Settlement Agreement;
- 9 2. The Court has jurisdiction over the subject matter of this Action and all Parties to
10 the Action, including all Settlement Class Members;
- 11 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies the
12 following Class for settlement purposes:

13 All persons from whom Gucci requested and recorded personal
14 identification information in conjunction with a credit card transaction
15 in any of Gucci's eight freestanding, full-priced California boutique
16 stores during the period of December 8, 2013, through the Preliminary
17 Approval Order date. Excluded from the Class are any specific
18 transactions that involved shipping, delivery, servicing, installation or
19 a special order.

- 20 4. Pursuant to Rule 23(c)(3) of the Federal Rules of Civil Procedure, all such persons
21 who satisfy the Class definition above, except those Class Members who timely and
22 validly excluded themselves from the Settlement Class, are Settlement Class
23 Members bound by this Judgment.
- 24 5. Pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, the Court finds that
25 the named plaintiff in this Action, Jessica Manner, is a member of the Settlement
26 Class, her claims are typical of the Settlement Class, and she fairly and adequately
27 protected the interests of the Settlement Class throughout the proceedings in this
28 Action. Accordingly, the Court appoints Jessica Manner as Class Representative.
- 29 6. The Court finds that the Settlement Class meets all requirements of Rule 23(a) and
30 (b)(3) of the Federal Rules of Civil Procedure for certification of the class claims

- 1 alleged in the Complaint, including: (a) numerosity; (b) commonality; (c) typicality;
2 (d) adequacy of the Class Representative and Class Counsel; (e) predominance of
3 common questions of fact and law among the Class; and (f) superiority;
- 4 7. Having considered the factors set forth in Rule 23(g)(1) of the Federal Rules of Civil
5 Procedure, the Court finds that Thomas J. O'Reardon II, of Blood Hurst &
6 O'Reardon, LLP, and Todd D. Carpenter, of Carpenter Law Group have fairly and
7 adequately represented the Class for purposes of entering into and implementing the
8 Settlement, and, thus, appoints Mr. O'Reardon and Mr. Carpenter as Class Counsel
9 for the Settlement Class;
- 10 8. In accordance with the Court's Preliminary Approval Order and the Court-approved
11 notice program, the Claims Administrator caused the Class Notice to be
12 disseminated as ordered. The Class Notice advised Class Members of the terms of
13 the Settlement, of the Final Approval Hearing and their right to appear at such
14 hearing, of their rights to remain in or opt out of the Settlement Class and to object
15 to the Settlement, procedures for exercising such rights, and the binding effect of
16 this Judgment to the Settlement Class;
- 17 9. The distribution of the Class Notice constituted the best notice practicable under the
18 circumstances and fully satisfies the requirements of Rule 23 of the Federal Rules
19 of Civil Procedure, the requirements of due process, 28 U.S.C. §1714, and any other
20 applicable law;
- 21 10. The Settlement proposed by the parties is fair, reasonable, and adequate. The terms
22 and provisions of the Settlement are the product of lengthy, arms-length
23 negotiations conducted in good faith and with the assistance of the Honorable
24 Edward A. Infante (Ret.). Approval of the Settlement will result in substantial
25 savings of time, money, and effort to the Court and the parties, and will further the
26 interests of justice;

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- 1 11. No Class Members have timely or validly submitted requests for exclusion from the
- 2 class. Therefore, all Settlement Class Members are bound by this Judgment and by
- 3 the terms of the Settlement;
- 4 12. The Court awards attorneys' fees, costs, and an incentive service award to Jessica
- 5 Manner as set forth in the Court's Order submitted simultaneously with this Order;
- 6 13. The Court dismisses with prejudice the Action and all released claims set forth in
- 7 Sections 4.3 and 4.4 of the Settlement Agreement;
- 8 14. Without affecting the finality of this Judgment, the Court reserves jurisdiction over
- 9 the implementation, administration, and enforcement of this Judgment and the
- 10 Settlement; and
- 11 15. There is no just reason for delay in the entry of this Final Judgment and Order
- 12 approving Settlement and immediate entry by the Clerk of the Court is expressly
- 13 directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

14 **IT IS SO ORDERED.**

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16 **DATED: October 13, 2016**


Hon. Cynthia Bashant
United States District Judge

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